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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,005	04/01/2004	Ken Wilkinson	WI01-P05	9552

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EXAMINER	
TAPOLCAI, WILLIAM E	

ART UNIT	PAPER NUMBER
3744	

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/816,005	WILKINSON, KEN	
	Examiner	Art Unit	
	William E. Tapolcai	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) *21-25* is/are withdrawn from consideration.

5)☒ Claim(s) *17-20* is/are allowed.

6)☒ Claim(s) *1-8 and 10-16* is/are rejected.

7)☒ Claim(s) *9* is/are objected to.

8)☒ Claim(s) *1-25* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *20040401*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-20, drawn to a flash freezer, classified in class 62, subclass 407.

II. Claims 21-25, drawn to a process for flash freezing, classified in class 62, subclass 89.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another and materially different apparatus such as one that does not have a bulkhead.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with John Reid on May 24, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4, 5, 10, 11, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by the Japanese patent 5-332655. This reference discloses a cabinet having a plenum with a plurality of first air passage apertures 11a and second air passage apertures 11b and bulkhead 10a forming a plenum 3.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent 5-332655. The Japanese patent 5-332655 discloses the claimed invention except for the air mover being a high static fan, and for the plurality of flash freeze compartments. The type of fan used is considered to be a matter of obvious choice, as high static fans per se are considered to be well known, and no criticality or unexpected results are seen or have been disclosed for the use of a high static fan. Also, the use of a plurality of flash freeze compartments is seen as a mere obvious duplication of parts, as to whether a single compartment or a plurality of compartments are used.

9. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent 5-332655 in view of Kim. The Japanese patent 5-332655 discloses the claimed invention except for the slidable isolation plates. Kim teaches an air flow

distributor having a slide plate with apertures. It would be obvious to provide the Japanese patent 5-332655 with slide plates for the plates 10a and 10b, in view of Kim, for the purpose of controlling the flow rate of air through the chamber 10.

10. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese patent 5-332655 in view of Lajeunesse. The Japanese patent 5-332655 discloses the claimed invention except for the access doors. Lajeunesse teaches a cabinet with doors 16 and 20 on opposite sides of the cabinet. It would be obvious to provide the cabinet of the Japanese patent 5-332655 with doors on opposite sides thereof, in view of Lajeunesse, for the purpose of providing more readily available access thereto.

11. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 17-20 are allowed.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Tapolcai whose telephone number is (571) 272-4814. The examiner can normally be reached on Mon. - Thurs., 6:30 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William E. Tapolcai
Primary Examiner
Art Unit 3744

wet
May 25, 2005